



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

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David K. Paylor
Director

VIRGINIA WASTE MANAGEMENT BOARD
ORDER BY CONSENT
ISSUED TO
MIDDLESEX COUNTY
FOR
MIDDLESEX COUNTY SANITARY LANDFILL
Solid Waste Permit No. 20

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and Middlesex County, regarding the Middlesex County Sanitary Landfill, for the purpose of addressing compliance with the Virginia Waste Management Act and the applicable Permit No. 20.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and - 1401.
2. "CAP" means Corrective Action Plan.
3. "County" means Middlesex County, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Landfill" means Middlesex County Sanitary Landfill, located at the end of State Route 705, south of State Route 629 approximately 3 miles southeast of Saluda in Middlesex County, Virginia.
7. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Permit" means Solid Waste Permit No. 20, which was issued in accordance the Code of Virginia and Regulations, as adopted by the State Board of Health, to Middlesex County on September 20, 1971.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulation" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§10.1-1400 *et seq.*) of title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through – 11413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On September 20, 1971, the State Department of Health, predecessor of the DEQ, granted Middlesex County Permit No. 20 to operate an unlined Sanitary Landfill, which is located at the end of State Route 705, three miles southeast of Saluda, Virginia. The Permit was amended on May 8, 2003, November 2, 2003 and last amended on January 28, 2010.
2. The Landfill was operated as a municipal solid waste landfill beginning on September 20, 1971. The Landfill stopped accepting waste prior to October 9, 1993. Middlesex County continues to maintain and monitor the closed Landfill under Permit No. 20.

3. The County was certified to have completed closure activities at the Landfill on December 15, 1993, but is required to continue to perform groundwater monitoring at the compliance monitoring wells to determine if there has been a release from the Landfill.
4. A review of the 2004 Landfill Groundwater Monitoring reports identified Groundwater Protection Standard (GPS) exceedances for Methylene Chloride and Mercury. Due to the 2004 GPS exceedances, the County was required by 9 VAC 20-80-310(A)(1), to notify DEQ of the County's plan to complete a Nature and Extent Study (NES) and initiate an Assessment of Corrective Measures (ACM) or a Proposal for Presumptive Remedies (PPR) within 90 days of notification of a GPS exceedance. DEQ allowed a 90-day extension for the NES/PPR submittal.
5. On April 19, 2005, the County submitted an NES and PPR. Upon DEQ review, the PPR was deemed incomplete. In October 2006, DEQ sent a clarification letter to the County that stated the County must submit an updated PPR or an ACM (or CAP in lieu of an ACM).
6. In 2006, the Landfill Groundwater Monitoring reports identified GPS exceedances for arsenic and vinyl chloride.
7. In January 2007, the County requested, and DEQ agreed, to a 180-day extension for submittal of a CAP to address the GPS exceedances.
8. In May 2007 the County submitted a NES addendum and in July 2007 submitted a CAP.
9. In February and March 2008 respectively, DEQ issued a NES addendum and CAP review letter to the County. In July 2008, the County responded to the comments regarding the CAP, submitted an updated CAP, CAMP (Corrective Action Monitoring Plan) and SWMP (Surface Water Monitoring Plan).
10. By letter dated October 19, 2009, DEQ issued a review of the CAP and CAMP; and on December 1, 2009, the County responded to the Department's review.
11. Pursuant to 9 VAC 20-80-310, Middlesex County is required to implement a corrective action program. In 2010, the Department and County have continued to negotiate an approvable Corrective Action Program in accordance with the requirements of 9 VAC 20-80-310.
12. The County met with DEQ on August 26, 2010, to discuss resolution of the handling groundwater corrective action at the Landfill. In lieu of obtaining a corrective action permit, the Department and Middlesex County have agreed to address compliance and corrective action through this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §10.1-1455, the board orders Middlesex County, and Middlesex County agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Middlesex County for good cause shown by Middlesex County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-400 *et seq.*, after notice and opportunity to be heard.
2. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Middlesex County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Middlesex County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Middlesex County declares it has received fair and due process under the Administrative Process Act and Virginia Waste Management Act and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Middlesex County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Middlesex County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or other such occurrences. Middlesex County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Middlesex County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Middlesex County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Middlesex County. Nevertheless, Middlesex County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Middlesex County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or Board terminates the order in his or its sole discretion upon 30 days' written notice to Middlesex County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Middlesex County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Middlesex County and approved by the Department pursuant to this order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of the Order.
13. The undersigned representative of Middlesex County certifies that he or she is a responsible official authorized to enter into terms and conditions of this Order and to execute and legally bind Middlesex County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Middlesex County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the facts and conclusions identified in Section C of this Order, and there are no representations, warranties, covenant, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Middlesex County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

Michael P. Murphy, Regional Director
Department of Environmental Quality

Middlesex County voluntarily agrees to the issuance of this Order.

Date: 2/1/2011 By: CM Culley County Administrator
(Person) (Title)

Commonwealth of Virginia

City/County of Middlesex

The foregoing document was signed and acknowledged before me this 1st day of

February, 2011, by Charles M. Culley, Jr. who is
(Name)

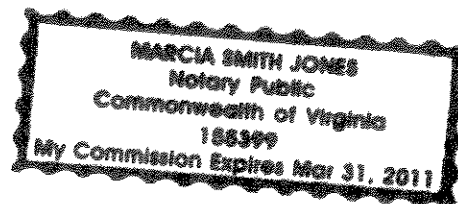
County Administrator of Middlesex County.
(Title)

Marcia Smith Jones
Notary Public

155399
Registration No.

My commission expires: 3-31-2011

Notary seal:



APPENDIX A

Middlesex County shall:

1. Comply with the VSWMR except for 9 VAC 20-90-60, including the requirements of 9 VAC 20-80-310 et seq. governing groundwater corrective action and this Order until such time as groundwater corrective action is complete or a permit amendment for corrective action has been completed.
2. Implement a groundwater corrective action program at the facility in accordance with 9 VAC 20-80-310 et seq. and any guidance documents or materials provided to Middlesex County by DEQ including the document entitled "Middlesex County Corrective Action Requirements" provided to Middlesex County on **November 15, 2010**, as well as any local, state, or federal law or regulation. Any such documents including the "Middlesex County Corrective Action Requirements" including any amendments and revisions are incorporated by reference into this Order.
3. Until the CAP is ready to implement, institute interim measures in accordance with 9 VAC 20-80-310(C)(1)(c).
4. Within 30 days of the effective date of this Order, implement the CAP at the landfill.
 - a. Middlesex County shall have a written CAP for the landfill and shall update this Plan as needed, or in response to any changes to the Plan requested by DEQ.
 - b. Middlesex County shall receive DEQ approval prior to changing, altering, or amending the CAP.
5. Implement the CAP and conduct groundwater remediation actions until such time as Middlesex County is released by the Department pursuant to 9 VAC 20-80-310(C). Until the County is released from its requirement to remediate groundwater, the County shall submit to the Director periodic Corrective Action Site Evaluation reports due once every three years, submitted on the calendar date this Order was issued.